

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

**IN RE: NATIONAL COLLEGIATE
ATHLETIC ASSOCIATION STUDENT-
ATHLETE CONCUSSION LITIGATION**

MDL NO. 2492

Master Docket No. 13-cv-09116

Judge John Z. Lee

Magistrate Judge M. David Weisman

**UNOPPOSED FOURTH MOTION FOR LEAVE TO PAY
MEDICAL MONITORING EXPENSES
FROM THE SETTLEMENT FUND**

Settlement Class Counsel respectfully requests that the Court grant leave to the Program Administrator to pay Medical Monitoring Program expenses from the Medical Monitoring Fund to Epiq Mass Tort (fka Garretson Resolution Group) for payment of (1) \$331,999 for past and projected Class Member Services (call center) activity, (2) \$43,557 for maintenance of the network of Program Locations starting in September 2021, (3) \$17,217 in provider support and provider invoice processing activities, (4) \$86,064 in software maintenance, (5) \$97,608 in ongoing Program management, and (6) \$10,000 in pass-through licensing fees to Pearson, and \$7,285 in pass-through access fees to LexisNexis.

In support thereof, Settlement Class Counsel state as follows:

1. On November 5, 2019, the Court set November 18, 2019 as the Effective Date under the terms of the Second Amended Class Action Settlement Agreement (Dkt. 558-1) (“Settlement Agreement”). *See* Dkt. 578. Under the terms of the Settlement Agreement, Epiq, as the Program Administrator, is directed to make certain payments from the Medical Monitoring Fund, including “[a]ll payments for costs of administration of the Medical Monitoring Program, in amounts to be approved by the Court.” Dkt. 558-1 at Section IV.A.2.c.

2. Since the previous submission to the Court on February 4, 2021 (Dkt. 606), Epiq has incurred additional expenses in 2020 and 2021 in its ongoing implementation and delivery of the Medical Monitoring Program. Declaration of Crystal Utley of Epiq Mass Tort (“Utley Decl.”) ¶ 2 (filed with this Motion as Exhibit 1).

3. Epiq seeks reimbursement of fees and expenses falling within the following *six* categories. *Id.* ¶ 25.

4. First, Epiq requests approval of \$331,999 for *past and projected Class Member Services (call center) activity*. *Id.* ¶¶ 9-13, 25.

5. This work began in early 2020 and continued through February 2021, after which the call center transitioned to a heavy focus on supporting the scheduling of in-person Medical Evaluations for Qualifying Class Members. *Id.* ¶ 9.

6. In total, Epiq projects past and projected Class Member Services activities through the end of 2021 to total \$331,999. When compared to the prorated, inflation-adjusted 2015 cost estimate for the same activities of \$366,382, current projections represent a savings of \$34,383 over the original estimate. *Id.* ¶ 13.

7. Second, Epiq requests \$43,557 for *maintenance of the network of Program Locations starting in September 2021*. *Id.* ¶¶ 14-15, 25.

8. Epiq anticipates largely completing the construction of the network of Program Locations by the end of August 2021. Beginning in September 2021, Epiq will then focus on maintenance of the network of Program Locations, which includes activities such as supplementing the network in areas of especially high demand for Medical Evaluations and replacing Program Locations who leave the Program. *Id.* ¶ 14.

9. Adjusting the 2015 cost estimate for these activities for inflation, then prorating them for the four months of 2021 that these tasks will be performed, results in a cost estimate of \$43,557. Based on current projections, Epiq believes fees for these activities will not exceed estimates. *Id.* ¶ 15.

10. Third, Epiq requests \$17,217 in *provider support and provider invoice processing activities*. *Id.* ¶¶ 16-17, 25.

11. These activities encompass the Epiq Operations Team's work in support of providers at Program Locations, including assistance with the Provider Portal, troubleshooting issues, and processing and paying provider invoices. These activities began in May 2021. Adjusting the 2015 cost estimate for inflation and prorating for the eight months in 2021 that these tasks will be performed results in a cost estimate of \$38,767. *Id.* ¶ 16.

12. Due to process enhancements that Epiq has put in place since the 2015 cost estimate, Epiq estimates 2021 fees for these activities will be much lower than expected, for a total of \$17,217. This represents a savings of \$21,550 versus the 2015 cost estimate. *Id.* ¶ 17.

13. Fourth, Epiq requests \$86,064 in *software maintenance* expenses. *Id.* ¶¶ 18, 25.

14. In its 2015 cost estimate, Epiq estimated software maintenance costs of \$75,000. Adjusting this estimate for inflation results in a cost estimate of \$86,604. (This task will be performed throughout 2021, so proration is not necessary.) Based on current projections, Epiq believes costs for these activities will not exceed estimates. *Id.* ¶ 18.

15. Fifth, Epiq requests \$97,608 in *ongoing Program management* expenses. *Id.* ¶¶ 19-20, 25.

16. Overall Program management beyond initial Program setup was not contemplated in Epiq 2015 cost estimate. Overall Program management activities such as communications

with the Special Master, the Parties, and the Medical Science Committee; reporting; and coordination among various Epiq departments were not included in the 2015 cost estimate. Based on Program management activities in 2021 to date, Epiq projects total fees for this category of \$97,608 for the full year. *Id.* ¶ 19.

17. Although Epiq notes that Program management will be an ongoing need, Epiq anticipates that costs for these activities will decline in future years. In its experience implementing other nationwide medical monitoring programs, first-year management expenses are higher than ongoing expenses, as Settlement Class Members are registering and initially navigating the Program, as providers are learning the administrative requirements of the Program, and as software bugs and gaps in Program processes are discovered, corrected, and documented. Although Epiq does not have current projections for Program management costs beyond 2021, it believes Program management expenses will decline no later than 2023, if not beginning in 2022. *Id.* ¶ 20.

18. Finally, Epiq requests \$10,000 in pass-through *licensing fees* to Pearson, and \$7,285 in pass-through *access fees* to LexisNexis. *Id.* ¶¶ 21-25.

19. Epiq previously paid up-front licensing fees to owners of four psychological assessments required by the Medical Science Committee as part of the Screening Questionnaire. The owner of two tests, Pearson (which owns the Beck Depression Inventory II [BDI-II] and the Brief Symptom Inventory 18 [BSI-18]), agreed to allow the Program to pay for assessments as they are used, along with the payment of an up-front \$6,880 licensing fee. Based on pay-as-you-go charges to date and projected charges for the remainder of 2021, Epiq estimates pass-through licensing fees of no more than \$10,000 for the Pearson tests administered through the Screening Questionnaire. *Id.* ¶ 22.

20. Epiq has also paid fees to LexisNexis for use of its proprietary identity verification service. This service enables Epiq to verify the identity of all individuals attempting to register for the Program with the use of their personal identifying information. Epiq paid \$2,035 in up-front implementation fees in 2020 and pays a monthly fee of \$250 for use of this technology. Through the end of 2021, Epiq projects total pass-through costs for this technology for which it has not been reimbursed of \$7,285. *Id.* ¶ 23.

21. Per the Court's prior instructions, Epiq has demonstrated how the costs are in line with or depart from costs addressed in prior Epiq Reports submitted on April 14, 2015 (Dkt. 161), April 20, 2015 (Dkt. 170), August 9, 2018 (Dkt. 516), and April 8, 2020 (Dkt. 591). *See* Utley Decl. ¶¶ 9-13 (discussing class member services expenses), ¶¶ 14-15 (discussing Program Location Network maintenance expenses), ¶¶ 16-17 (discussing provider support and provider invoice processing expenses); ¶ 18 (discussing software maintenance expenses); ¶¶ 19-20 (discussing program management expenses); ¶¶ 21-24 (discussing pass through expenses).

22. Should the Court approve payment of the amounts requested in the Utley Declaration, the total approved hourly fees for Program Setup will equal \$2,558,076 and approved one-time pass-through expenses for Program Setup will total \$107,868. Utley Decl. ¶¶ 26-27.

23. Settlement Class Counsel certifies that these settlement expenses are necessary for the purpose of a just and efficient settlement of this case.

24. The NCAA does not oppose this motion.

WHEREFORE, Settlement Class Counsel respectfully requests the Court grant leave for payment of \$593,730 in fees and expenses to Epiq Mass Tort.

Date: October 8, 2021

Respectfully submitted,

By: /s/ Daniel J. Kurowski

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CERTIFICATE OF SERVICE

The undersigned, an attorney, hereby certifies that on October 8, 2021 a true and correct copy of the foregoing was filed electronically via CM/ECF, which caused notice to be sent to all counsel of record.

By: /s/ Daniel J. Kurowski